

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

RICHARD WEST and JOSEPH
BRUYETTE, individually and on behalf
of a class of similarly situated persons
Plaintiffs,

v.

Civil Action No. 2:19-cv-81

MICHAEL SMITH, Vermont Secretary of Human
Services;
The Vermont Deputy Secretary of Human
Services;
JAMES BAKER, Vermont Department of
Corrections Commissioner; and
The Vermont Department of Corrections Health
Services Director, in their official capacities,
and
CENTURION OF VERMONT, LLC,
Defendants.

**SUPPLEMENT TO
DEFENDANTS' JOINT MOTION TO STAY (PAPER 61)**

NOW COME Defendants to supplement their Joint Motion to Stay, filed on April 10, 2020 as Paper 61.

One factor in deciding to grant or deny a Motion to Stay pursuant to F.R.Civ.Proc. 23(f) is, “[E]ither (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the party seeking injunctive relief.”

Friends of the Earth v. U.S. Forest Service, 95 F.Supp.2d 206, 207–08 (D.Vt., 2000).

The Defendants’ Joint to Motion to Stay stated on page 3:

Given that the reasons for staying the class action are so closely related to the reasons for the appeal of the Court’s certification of the class, it serves no purpose to repeat those arguments and the supporting record here. Defendants adopt the reasons for the appeal stated in their petition to the Circuit Court, which will be filed in the Circuit Court on Monday, April 13, 2020, and will be submitted as a supplement to this Motion for Stay.

As set out in the Motion to Stay, the balance of hardships favors a stay pending appeal. Today, April 13, 2020, Defendants have filed jointly their Rule 23(F) Petition for Permission to Appeal in the United States Court of Appeals for the Second Circuit. For the reasons enumerated in their Petition, Defendants respectfully state that there is a reasonable likelihood of success in obtaining Circuit Court review of this Court's certification of a class action and that there are serious questions regarding the merits of class certification.

WHEREFORE Defendants hereby submit their Rule 23(F) Petition for Permission to Appeal in the United States Court of Appeals for the Second Circuit, attached as Exhibit 1, in support of their Joint Motion to Stay.

DATED: April 13, 2020.

CENTURION OF VERMONT, LLC

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Secretary Mike Smith
Commissioner James Baker

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2020, I electronically filed the *SUPPLEMENT TO DEFENDANTS' JOINT MOTION TO STAY (PAPER 61)* with the Clerk of the Court using the CM/ECF system:

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DATED at Burlington, Vermont, this 13th day of April 2020.

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